IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

WP(C).No. 29974 of 2003(R)

PETITIONER:

ALEYAMMA MICHAEL, W/O.LATE PETER MECHAEL CHERUVALIKATTU HOUSE, VADACKAL P.O., ALEPPEY, KERALA.

BY ADV. SRI. P.R. VENKITESH

RESPONDENTS:
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1. UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVERNMENT OF INDIA, LOK NAYAK BHAVAN, NEW DELHI.

2. STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVT., GENERAL ADMINISTRATION (FFF.A) DEPARTMENT, THIRUVANANTHAPURAM.

BY ADV. SRI.D.SOMASUNDARAM, ADDL.CGSC
GOVERNMENT PLEADER ADV. SRI. V.T.K. MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 29974/2003 R

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE STATE GOVT. PENSION ORDER NO. R. DIS 14130/72 DT. 14/09/73 IN FAVOUR OF PETITIONER'S HUSBAND.

EXT.P2. COPY OF THE PENSION ORDER NO. R. DIS 53185/83/N4/ DT. 24/09/83 IN FAVOUR OF THE PETITIONER.

EXT.P3. COPY OF THE PETITIONER'S APPLICATION DT. 31/12/98 SUBMITTED THROUGH THE GOVT.

EXT.P4. COPY OF THE LETTER NO. 37336/FFP/A2/99/GAD DT. 6/6/00 FROM THE R2 TO THE R1.

EXT.P5. COPY OF THE SSS PENSION SCHEME 1980 BY THE GOVT. OF KERALA.

EX.T.P6. COPY OF THE COMMUNICATION NO. 119/7/2000/FF(SZ) DT. 4/8/00 FROM THE OFFICE OF THE R1 TO THE PETITIONER.

EXT.P7. COPY OF THE THAMARAPATHRA ISSUED TO THE PETITIONER.

EXT.P8. COPY OF THE CERTIFICATE DTD. 17/10/72 BY MR. V.S. ACHUTHANANDAN TO THE PETITIONER.

RESPONDENT'S EXHIBITS **NIL.**

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T.R. Ramachandran Nair, J.

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W.P.(C).NO.29974 of 2003-R

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Dated this the 16th day of August, 2007

JUDGMENT

The writ petition is filed challenging Ext.P6 order passed by the Union of India rejecting the claim of the petitioner for grant of pension under the S.S.S. Pension Scheme. The legal issue that is raised in this case is now covered in favour of the petitioner in view of the decision of the Full Bench of this court reported in 2003 (1) KLT 467. On that short ground, Ext.P6 is liable to be quashed.

2. Short facts leading to the claim are the following: The petitioner is the widow of late Shri Peter Mechael who was a prominent freedom fighter. He was awarded 'Thamrapathra' by the Government of India and the State Government has also granted him Freedom Fighters' Pension apart from grant of 2 acres of forest land in Chithra Village, Kottarakkara Taluk. Ext.P1 is the order by which the State Government had granted pension to the deceased husband of the petitioner. He died in the year 1983. Thereafter the petitioner applied for the grant of benefit of the dependents under the State Scheme which was ordered as per Ext.P2 in her favour. The petitioner, on 31.12.1998 had filed Ext.P3 application for grant of Central

Pension. The State Government, as per Ext.P4, has recommended the application also. But this was rejected as per Ext.P6 stating that as per the provisions contained in Explanation III of the SSS Pension Scheme, only in the case of a trial ending in conviction alone, the under trial period will be counted towards imprisonment suffered. Therefore, it was concluded that since the late husband of the petitioner was released without conviction, his under trial period does not qualify for grant of SSS Pension. In sub para 2 of Ext.P6, Government of India has dealt with other ground raised for grant of pension, i.e., underground suffering from Thulam 8, 1122 M.E. To Dhanu 8, 1122. In the light of the fact that the petitioner is entitled to claim the benefit based on the under trial imprisonment itself, it is not necessary to refer to the said aspect herein.

3. The issue whether the under trial imprisonment would be considered for grant of pension even though the trial did not end in conviction, was considered by a Division Bench of this court in 2002 (1) KLT 46. Again, the matter was considered by a Full Bench of this court in 2003 (1) KLT 467, wherein the above decision of the Division Bench was upheld. Their Lordships of the Full Bench declared the law thus:

> "Nowhere in the scheme we find any provision to the effect that the period of detention or imprisonment or suffering in jail could be counted towards the minimum period of six months imprisonment if

> only the trial ends in conviction. We are clearly of the view that actual jail suffering during the trial of the case is imprisonment for the purpose of the scheme and it is immaterial whether the trial ended in conviction or acquittal. The provision speaks of undertrial period. The purpose of Explanation 3 and the benefit intended to be conferred by that Explanation are quite evident from the words used therein. On the strength of the above Explanation, a freedom fighter who was convicted for participation in freedom struggle, is entitled to count his undertrial period towards actual suffering, without undergoing jail suffering during the period of trial even for a day. It is immaterial whether he was under detention or on bail or otherwise during the trial period. But in a case where the trial did not end in conviction, the undertrial period (not imprisonment) will not be counted towards imprisonment. Thus by fiction certain period which in reality cannot be counted towards actual imprisonment is deemed as imprisonment by virtue of Explanation 3. We are of the view that such a provision cannot be made use of or called in aid to contend that a certain period which, in fact, is detention or imprisonment or jail suffering, shall be understood as something other than actual imprisonment by the mere factum of acquittal. The scheme does not make any attempt to denude the term imprisonment or jail suffering or detention its plain and natural meaning by drawing a distinction between jail suffering as undertrial prisoner and as convicted prisoner."

In the light of the above decision of the Full Bench, the reason stated in Ext.P6 to reject the application of the petitioner for grant of pension under the Central Scheme is unsustainable. Ext.P6 is therefore quashed. It is declared that the petitioner is entitled for grant of the benefit of the scheme. Therefore, there will be a direction to the first respondent to pass appropriate orders sanctioning the same with arrears from the date of application, within a period of two months from the date of receipt of a copy

of this judgment.

The writ petition is disposed of in the above terms. No costs.

(T.R. Ramachandran Nair, Judge.)

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